U.S. Senate Republican Policy Committee

Conference Report Highlights

Jon Kyl, Chairman

November 20, 2003

Highlights of the Conference Report to Accompany H.R. 6, the Energy Policy Act of 2003

H. Rept. 108-375 was filed on November 18, 2003.

NOTEWORTHY

- Based on a preliminary review, the Congressional Budget Office estimates that the legislation would increase direct spending by $3.7 billion over the 2004-2008 period and $5.4 billion over the 2004-2013 period. CBO and the Joint Committee on Taxation estimate that it would reduce revenues by $17.4 billion over the 2004-2008 period and by $25.7 billion over the 2004-2013 period.

- According to Senate Energy and Natural Resources Committee Chairman Pete Domenici, the legislation would create nearly 1 million jobs, improve the nation's energy security, and ensure affordable and reliable energy for all Americans.

- The Conference Report would implement mandatory electricity reliability standards; repeal the Public Utility Holding Act, thereby increasing investment in electricity transmission and generation; forestall Federal Energy Regulatory Commission's rulemaking on Stardard Market Design until December 2006; address electric transmission grid congestion; and address market manipulation and fraud.

- The Conference Report would require the introduction of 5 billion gallons of ethanol and other renewable fuels per year to the nation's gasoline supply. It also provides liability protection to producers and users of MTBE, a fuel additive that was approved and encouraged by the Federal government.

- The Conference Report provides large loan guarantees towards the construction of an Alaskan natural gas pipeline. It also streamlines the permitting process to allow oil and gas exploration on federal lands.

The House passed the Conference Report on November 18, by a vote of 246-180.

Highlights

Title I - Energy Efficiency

Subtitle A – Federal Programs: The Conference Report requires the federal government to reduce energy use in federal buildings, beginning with a 3-percent decrease in 2004, and a further incremental lowering of energy use until a reduction of 20 percent is achieved by 2013; it also directs the Secretary of Energy to provide recommendations for energy-efficiency requirements for 2014-2023.

Subtitle B – Energy Assistance and State Programs: The Conference Report increases base LIHEAP (low-income home energy assistance program) authorization to $3.4 billion for each of fiscal years 2004-2006, and increases the base weatherization assistance authorization to $325 million for fiscal year 2004, $400 million for fiscal year 2005, and $500 million for fiscal year 2006. The report also requires the states to set energy conservation goals to reduce energy use by 25 percent by 2010, relative to 1990 levels, to be eligible for Federal assistance under the Energy Policy and Conservation Act. The report authorizes $100 million for fiscal years 2004 and 2005, and $125 million for fiscal year 2006 to assist those states that meet various energy reduction goals under their state energy conservation plans.

Subtitle C – Energy Efficient Programs: The Conference Report expands the Energy Star program to promote Energy Star products as the preferred technology to the marketplace to increase energy efficiency and lower pollution. The report directs the Secretary of Energy to educate homeowners and small business owners on ways to maximize efficiency of installed air conditioning and heating systems. The report establishes new energy-efficiency standards for various new commercial and consumer products.

Subtitle D – Public Housing: The Conference Report provides various grants and subsidies to encourage energy efficiency in public housing.

Title II - Renewable Energy

Subtitle A – General Provisions: The Conference Report reauthorizes the Renewable Energy Production Incentive program to provide financial incentives for solar, wind, geothermal, or closed-loop (dedicated energy crops) biomass technologies to produce electricity. The conference report requires that, of the total amount of electric energy purchased by the Federal government, not less than 3 percent must be produced from renewable energy in fiscal years 2005-2007, 5 percent in fiscal years 2008-2010, and 7.5 percent in fiscal year 2011 and each year thereafter. The report provides the Administrator of General Services the authority to establish a photovoltaic energy commercialization program toward achieving the goal of installing solar energy systems on 20,000 federal buildings by 2010. The report provides a total of $300 million for solar programs, as well as a separate $210 million program for concentrating solar power for hydrogen production. The report also includes $550 million in grants for biomass programs. The bill encourages the promotion, development, and expansion of markets to use biomass – trees and woody plants, brush and other products – removed during treatment of Federal and Indian lands to reduce hazardous fuels and the risk from disease or insect infestation.

Subtitle B – Geothermal Energy: The Conference Report provides royalty relief for geothermal uses, including on-site electricity generation. The report also amends geothermal energy leasing provisions to provide for a competitive leasing system.

Subtitle C – Hydroelectric: The Conference Report modernizes and streamlines the nation's hydropower laws, while maintaining existing environmental protections. For example, the report directs the department supervising the licensing process to accept alternative conditions proposed by the license applicant that cost less to implement or result in improved operation for electricity production as compared to the condition initially deemed necessary by the Secretary, while maintaining adequate protection. When adopting a condition, the Secretary must give equal consideration to the effects of the condition on energy supply, distribution, cost and use, flood control, navigation, water supply, and air quality. The report authorizes $100 million to be distributed evenly over the fiscal years 2004 to 2013 for increased hydropower production through increased efficiency at existing dams.

Title III - Oil and Gas

Subtitle A – Petroleum Reserve and Home Heating Oil: The Conference Report permanently authorizes the Strategic Petroleum Reserve and directs the Secretary of Energy to expeditiously fill the Strategic Petroleum Reserve to its one-billion-barrel capacity. It also extends authorization for the National Oilheat Research Alliance.

Subtitle B – Production Incentives: The Conference Report provides for inkind payments of royalties for leases on Federal lands for oil and gas development. The report provides royalty relief for marginal wells located on Federal lands and on the Outer Continental Shelf, for deep and ultra-deep gas wells in the shallow waters of the Gulf of Mexico, and for non-producing offshore oil and gas leases in Alaska. The report provides natural gas market transparency and additional market reforms to prevent fraud.

Subtitle C – Access to Federal Land: The Conference Report contains several provisions to expedite Federal decisions on energy projects. It directs the Secretary of the Interior to conduct an internal review of the department's oil and gas leasing permitting practices, to ensure timely action on oil and gas leases and applications for permits to drill on lands otherwise available for leasing, establish a Federal Streamlining Pilot Project, and to develop best management practices to manage oil and gas leases and to improve inspection and enforcement of existing permits. The report also instructs the Secretaries of the Interior and Agriculture to designate energy corridors on western lands that can be used for the deployment of energy transportation and transmission rights of way.

Subtitle D – Alaska Natural Gas Pipeline: The Conference Report authorizes the Federal Energy Regulatory Commission to consider and act on an application for the issuance of a certificate of public convenience and necessity for the construction and operation of an Alaska natural gas pipeline from the North Slope to the lower 48 states. The report also includes loan guarantee authority for up to $18 billion of the cost of the project to support the construction of the pipeline. It also establishes an executive level office to coordinate agency actions related to the pipeline. The report also expresses the sense of Congress that the project should make every effort to use steel that is manufactured in the United States, to negotiate a project labor agreement, and maximize the use of small businesses.

Title IV - Coal

Subtitle A – Clean Coal Power Initiative: The Conference Report authorizes $200 million annually for fiscal years 2004 through 2012 for clean coal research and coal-based gasification technologies, and directs the Secretary of Energy to set increasingly restrictive emissions targets and other technical milestones throughout the lifetime of the program.

Subtitle B – Clean Power Projects: The Conference Report authorizes funding to the Secretary of Energy for loans, and authorizes the Secretary to make loan guarantees for a variety of clean coal projects around the country, including coal gasification; integrated gasification combined cycle technology; petroleum coke gasification; integrated coal/renewable energy systems; and electron scrubbing demonstration.

Subtitle C – Federal Coal Leases: The Conference Report amends several provisions of the Mineral Leasing Act governing the Federal Coal Leasing Program, including those pertaining to: lease modifications to avoid the bypass of coal, mining requirements for logical mining units, payment of advance royalties, and the deadline for submission of a coal lease operation and reclamation plan.

Subtitle D – Coal and Related Programs: The Conference Report amends the Energy Policy Act of 1992 to direct the Secretary of Energy to carry out a program to facilitate production and generation of coal-based power and the installation of pollution-control equipment. The report authorizes $300 million for fiscal year 2005, $100 million for fiscal year 2006, $40 million for fiscal year 2007, $30 million for fiscal year 2008, and $30 million for fiscal year 2009 to carry out a program to install pollution-control equipment. It also authorizes $150 million for fiscal year 2006, $250 million for each of the fiscal years 2007 through 2011, and $100 million for fiscal year 2012 for generation projects.

Title V - Indian Energy

The Conference Report assists Indian Tribes in the development of Indian energy resources by increasing Tribes' internal capacity to develop their own resources. It provides grants and technical assistance, and streamlines the approval process for Tribal leases, agreements and rights-of-way so that outside parties have more incentive to partner with Tribes to develop energy resources. The report creates the Office of Indian Energy Policy and Programs within the Department of Energy (DOE) to support the development of tribal energy resources. The report also provides a complete substitute for Title 26 of the Energy Policy Act of 1992. The substitute authorizes the Secretary of the Interior to provide grants to tribes to develop and utilize their energy resources and to enhance the legal and administrative ability to tribes to manage their resources. It establishes a process by which an Indian tribe, upon demonstrating its technical and financial capacity, could negotiate and execute energy resource development leases, agreements and right-of-way with third parties without first obtaining approval of the Secretary of the Interior. It allows the Secretary to review activities authorized under the Indian Mineral Development Act, and authorizes the Western Area Power Administration to make power allocations to meet the firming and reserve needs of Indian-owned energy projects and acquire power generated by Indian tribes for firming and reserve needs, so long as the rates and terms are competitive.

Title VI - Nuclear Matters

Subtitle A – Price-Anderson Act Amendments: The Conference Report renews for 20 years the Price-Anderson nuclear liability protections for both Nuclear Regulatory Commission licensees and Department of Energy contractors, including provisions to encourage the development of advanced modular reactors. Coverage is increased and indexed for inflation, and non-profit contractors of the Department are made subject to payment of penalties assessed for nuclear safety violations.

Subtitle B – General Nuclear Matters: The report places limits, with exemptions, on the sale of uranium. It also strengthens operations of the Nuclear Regulatory Commission. It protects decommissioning funds from misuse, improves the ability to attract and retain trained personnel, and clarifies license periods for new plants.

Subtitle C – Advanced Reactor Hydrogen Cogeneration Project: The report authorizes a construction project for a new test reactor to be constructed at the Idaho National Engineering and Environment Laboratory to serve as a national testbed for advance reactor technologies.

Subtitle D – Nuclear Security: The report also strengthens security of nuclear facilities, including improved federal oversight of plant security and the expansion of federal statutes for sabotage of nuclear facilities.

Title VII - Vehicles and Fuels

Subtitle A – Existing Programs: The Conference Report requires "dual-fueled" vehicles acquired under the Energy Policy Act of 1992 programs – applicable to Federal, state, local, and fuel-provider vehicle fleet – to be operated on alternative fuels. It provides credits for medium- and heavy-duty vehicles, hybrid vehicles and investment in alternative fuel infrastructure. Credits towards compliance with fleet mandates can be accrued for the actual use of alternative fuels, the purchase of neighborhood electric vehicles, investment in alternative fuel infrastructures, or equivalent contributions toward compliance by other fleets with their mandates through the purchase of vehicles or fueling infrastructure. The report requires a complete review of alternative-fuel mandates, and enables states to enact regulations to allow alternative-fuel vehicles to use High Occupancy Vehicle lanes, regardless of the number of passengers.

Subtitle B – Hybrid Vehicles, Advanced Vehicles, and Fuel Cell Buses: The Conference Report authorizes $200 million for an advanced vehicle program. This program, operating under the current Department of Energy "Clean Cities" program, would provide grants to state and local governments to acquire alternative-fueled and fuel-cell vehicles, hybrids and other vehicles, including ultra-low sulfur diesel vehicles.

Subtitle C – Clean School Buses: The report also authorizes funds for two new "Clean School Bus" programs: $100 million to retrofit existing diesel buses with new pollution-control technology, and $200 million in grants for replacement of older school buses with clean alternative-fueled and ultra-low, sulfur-fueled buses.

Subtitle D – Miscellaneous: The Conference Report authorizes $110 million for fiscal years 2005 through 2007 to increase railroad efficiency, requires studies on mobile emission reductions trading and crediting and aviation fuel conservation and emissions. It requires the Secretary of Energy to accelerate efforts to improve diesel combustion and after-treatment technologies for use in diesel-fueled motor vehicles. It establishes a Conserve by Bicycling Program withing the Department of Transportation. It requires the Administrator of the Environmental Protection Agency to conduct a review of the emissions reductions from long-duration idling of heavy-duty vehicles that could be achieved by requiring the installation of idle-reduction technology, and to complete revisions of the regulations as deemed appropriate. It requires the Secretary of Energy to implement a program to test the effect of biodiesel on current and future emission-control technologies. It provides a high-occupancy-vehicle exception for vehicles that operate on alternative fuels and hybrid vehicles.

Subtitle E – Automobile Efficiency: The report requires the National Highway Transportation Safety Administration to take into account the following considerations when setting fuel-economy standards: technological feasibility; economic practicability; the effect of other motor vehicle standards of the Government on fuel economy; the need to conserve energy in the United States; the effects of fuel economy standards on passenger automobiles, nonpassenger automobiles, and occupant safety; and the effects of compliance with fuel economy standards on levels of automobile industry employment in the United States. The report also extends incentives for "dual-fueled" vehicles for another for years.

Title VIII - Hydrogen

The Conference Report directs the Secretary of Energy to develop a coordinated plan to launch a hydrogen energy research program. The research will address production of hydrogen from diverse energy sources; use of hydrogen for commercial, industrial, and residential electric power generation; safe delivery of hydrogen or hydrogen-carrier fuels; advanced vehicle technologies; storage of hydrogen and hydrogen-carrier fuels; development of safe, durable, affordable, and efficient fuel cells; and so on. The report sets a program goal to put hydrogen-powered automobile on the road by 2020 along with necessary infrastructure to provide for safe delivery of hydrogen fuels. It establishes an interagency task force on hydrogen, as well as an outside advisory committee. The report authorizes $2.15 billion for the program for fiscal years 2004 through 2008.

Title IX - Research and Development

Subtitle A – Energy Efficiency: The Conference Report authorizes $3.87 billion for fiscal years 2004 through 2008 for the Department of Energy to conduct energy efficiency and conservation research. Programs funded from this sum include: the Next Generation Lighting Initiative (an additional $50 million for fiscal years 2009 through 2013 is also provided for this program); Secondary Electric Vehicle Battery Use Program; Energy Efficiency Science Initiative; and Electric Motor Control Technology.

Subtitle B – Distributed Energy and Electric Energy Systems: The Conference Report authorizes $1.11 billion for fiscal years 2004 through 2008 for the Department of Energy to conduct distributed energy and electric energy system research. Programs funded under this authorization include: research on hybrid distributed power systems that combine renewable electric power generation with nonintermittent electric power generation; the high-power density industry program; micro-cogeneration energy technology; distributed energy technology demonstration program; and reciprocating power program.

Subtitle C – Renewable Energy: The Conference Report authorizes $3.01 billion for fiscal years 2004 through 2008 for renewable energy research, including research on bioenergy, concentrating solar power, and other miscellaneous projects.

Subtitle D – Nuclear Energy: The Conference Report authorizes $2.06 billion for fiscal years 2004 through 2008 for nuclear energy research, including moneys for: nuclear energy research and development programs; nuclear infrastructure support; advanced fuel cycle initiative; university nuclear and engineering support; security of reactor designs research; research on industrial applications of large radioactive sources; and research on geological isolation of spent fuel.

Subtitle E – Fossil Energy: The Conference Report authorizes $2.91 billion for fiscal years 2004 through 2008 to be allocated for: oil and gas research programs; technology transfer; coal mining technologies; coal and related technologies; and ultra-deep water and unconventional natural gas and other petroleum resources.

Subtitle F – Science: The Conference Report authorizes $26.57 billion for fiscal years 2004 through 2008 to conduct: fusion energy research; spallation neutron source research; catalysis research; and nanoscale science and engineering research. It also provides support for science and energy facilities and infrastructure research, advanced scientific computing for energy missions, genomes to life program, fission and fusion energy materials research program, energy-water supply program, and nitrogen fixation research.

Subtitle G – Energy and Environment: The Conference report establishes programs for, among other things: United States-Mexico energy technology cooperation ($5 million for each fiscal year 2004 and 2005); western hemisphere energy cooperation ($66 million for fiscal years 2004 through 2008); Arctic Engineering Research Center ($3 million for each fiscal year from 2004 through 2009); and the Barrow Geophysical Research Facility ($61 million).

Title X - Department of Energy Management

The Conference Report creates a new Assistant Secretary position and expresses the sense of the Congress that the position should be used to improve management of nuclear energy at the Department of Energy, and grants the Secretary of Energy authority to enter into other transactions as appropriate to further research, development, and demonstration goals of the Department.

Title XI - Personnel and Training

The Conference Report requires the establishment of training guidelines for electric energy industry personnel and centers for building technologies and power plant operations training. It also directs increased activity by the Department of Energy to improve recruitment of under-represented groups in energy professions. The report directs the Secretary of Energy to support establishment of a National Power Plant Operations Center, and encourages agency coordination for training and outreach efforts for international commercial energy markets in countries with developing and restructuring economies.

Title XII - Electricity

Subtitle A – Reliability Standards: The Conference Report requires the Federal Energy Regulatory Commission to issue a rule to implement mandatory rules to ensure transmission grid reliability. Establishes Electric Reliability Organizations that must meet certain enforcement, transparency, and fairness standards.

Subtitle B – Transmission Infrastructure Modernization: The Conference Report directs the Secretary of Energy to conduct a study to determine which areas of the country are experiencing adverse economic effects due to electric transmission congestion, and to issue a report in which the Secretary may designate such areas as national interest electric transmission corridors. The Federal Energy Regulatory Commission may then issue permits for the construction or modification of electric transmission facilities in designated corridors, if certain conditions are met. These decisions are subject to the National Environmental Policy Act. The report also allows the Secretary to engage in third-party financing of transmission projects through the Western Area Power Administration and the Southwestern Power Administration. The report directs the Commissioner to encourage the deployment of advanced transmission technologies, such as superconducting cables, advanced conductor technology, high-capacity ceramic electric wire, etc. It directs the Secretary to establish a program to promote improved reliability and efficiency of electrical transmission and distribution systems, and authorizes $140 million for the program for fiscal years 2004 through 2008. The report authorizes $10 million for each of the fiscal years 2004 through 2010 to establish an advanced power system technology incentive program.

Subtitle C – Transmission Operation Improvements: The Conference Report provides for open access to transmission lines not previously subject to the same open-access requirements, thereby extending the Federal Energy Regulatory Commission's authority to nonjurisdictional municipal and cooperative utilities of 4 million megawatt hours per year or larger. The report provides for continued reservation of transmission capacity needed to serve "native load" customers. The report also remands the proposed rulemaking on Standard Market Design to the Federal Energy Regulatory Commission and prohibits a final rule before December 31, 2006.

Subtitle D – Transmission Rate Reform: The Conference Report directs the Commission to do an incentive rate rulemaking and provide for participant funding to promote reliable and economically efficient investment in transmission and generation capacity, provide an adequate rate of return to promote investment, encourage deployment of transmission technologies, and to recover prudently incurred costs. The Commission is directed to provide incentives to transmission and generating utilities to join Regional Transmission Organizations, and it provides for the approval of voluntary transmission pricing plans.

Subtitle E – Amendments to PURPA: The Conference Report amends Public Utility Regulatory Policies Act of 1978 to prospectively repeal the requirement for mandatory purchase from qualifying facilities by electric utilities if a competitive market exists and establishes new criteria for qualifying cogeneration facilities.

Subtitle F – Repeal of PUHCA: The Conference Report promotes investment in the electric sector by repealing the Public Utility Holding Company Act of 1935, which presented significant barriers to investment in electric power by persons or companies outside the electricity industry. The report replaces it with authority for federal and state regulators to examine relevant books and records.

Subtitle G – Market Transparency, Enforcement, and Consumer Protection: The Conference Report addresses market transparency; prohibits filing of false information and round-trip trading; requires the Federal Energy Regulatory Commission to meet public interest standards before abrogating contracts; and privacy and unfair trade practices. It also increases penalties for violations of the Federal Power Act.

Subtitle H – Merger Reform: The Conference Report provides for merger review reform and accountability.

Title XIII – Energy Tax Incentives

On April 2, 2003 the Senate Finance Committee adopted, by voice vote, S. 597, an $18.6-billion package of energy-related provisions meant to encourage alternative and traditional energy production, along with conservation and energy efficiency. [For a brief explanation of the provisions included in S. 597, see RPC Legislative Notice No. 20 on S. 14, the Energy Policy Act of 2003, issued May 7, 2003.]

While S. 597 was expected to be part of the final version of S. 14, the Energy Tax Policy Act of 2003, instead the Senate adopted the Energy bill passed in 2002 as a vehicle to get to a conference with the House of Representatives. What follows is a brief explanation provided by the Finance Committee of the tax provisions included in the conference report. (For a detailed explanation, please visit the Finance Committee website at http://finance.senate.gov/sitepages/leg/leg1118enrgyfinal.pdf.)

On November 18, 2003 the Joint Committee on Taxation estimated revenue losses associated with the energy tax incentives to be $23.5 billion over 10 years. The total revenue loss for the bill is $25.7 billion due to some interaction with other provisions.

Energy Conference--Tax Title	
Category	**2003-2013 ($Billions)**
Section 45	$3
Alternative Motor Vehicles Incentives	$2.5
Conservation and Energy Efficiency Incentives	$1.8
Investment and Production Credits for Clean Coal Technology	$2.5
Oil and Gas Provisions	$10.5
Electric Industry Restructuring Provisions	$2.8
Additional Provisions	$0.4
TOTAL	**$23.5**

<u>Overview of the Tax Title</u>
SUBTITLE A–Conservation

Part I–Residential and Business Property

- **Residential solar and wind property.** The provision allows a credit for residential solar energy and wind energy equipment. The credit equals 15 percent of investment, up to a maximum of $2,000. There is a credit for fuel cells equal to 20 percent of expenditures, up to a maximum of $500 per 0.5 kw. The credit is available beginning in 2004 through the end of 2006.

- **Credit for electricity produced from certain renewable resources.** Section 45 of the tax code provides a production tax credit ("PTC") for electricity produced from renewable resources. The conference agreement extends the placed-in-service date for wind facilities, closed-loop biomass facilities, and poultry waste facilities to facilities placed in service after December 31, 1993 (December 31, 1992 in the case of closed-loop biomass facilities and December 31, 1999 in the case of poultry waste facilities) and before January 1, 2007. The taxpayer may claim the section 45 credit against both the regular and the alternative minimum tax for the first four years of production.

The proposal also defines five new qualifying energy resources: open-loop biomass (including agricultural livestock waste nutrients), geothermal energy, solar energy, small irrigation power, and municipal solid waste.

- **Fuel cells.** The provision allows a 20-percent credit for the purchase of business fuel cells, up to a maximum of $500 for each 0.5 kilowatt of capacity. The credit is available beginning in 2004 through 2006.

- **Energy efficient new homes.** The provision allows a credit to the contractor of new energy efficient homes that achieve either 30 percent or 50 percent energy savings over the 2000 International Energy Conservation Code (IECC). The maximum credit is $1,000 for 30-percent homes and $2,000 for 50-percent homes. Manufactured homes certified by the Energy Star Labeled New Home program would also be eligible for the $1,000 credit. The credit would be available beginning in 2004 through the end of 2006.

- **Energy efficient existing homes.** The provision establishes a 20-percent tax credit to individuals for the purchase of qualified energy efficient improvements to existing homes, up to a maximum of $2,000. Qualified improvements would include windows and insulation which meet the 2000 IECC standard, or pigmented roofs that meet the Energy Star standards. Improvements over $1,000 would need to be certified by a third party. The credit would be available beginning in 2004 through the end of 2006.

- **Combined heat and power.** The provision provides a 10-percent credit for the purchase of combined heat and power (CHP) systems, which are less than 15 megawatts and 60 percent efficient. Systems whose fuel source is at least 90 percent bagasse (a byproduct of sugar processing) would qualify for a credit which would be reduced in proportion to the degree to which the system fails to meet the efficiency standards. The credit is available beginning in 2004 through the end of 2006.

- **Energy efficient appliances.** The provision establishes a credit for the manufacture of energy-efficient washing machines and refrigerators. The credit would equal $100 per appliance for washers with an MEF of 1.5 or greater and for refrigerators that consume 15 percent less energy than the DOE standard (20 percent less energy for 2007). The credit is $150 for refrigerators produced before 2007 that consume 20 percent less energy than the DOE standard. The credits would only apply to production in the excess of the three-year rolling average. The credits may not exceed $60 million per taxpayer for all taxable years. The credit applies to appliances produced beginning in 2004 through the end of 2007.

- **Energy efficient commercial buildings.** The provision allows a deduction for energy efficient commercial buildings that reduce annual energy and power consumption by 50 percent compared to the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) standard. The deduction would equal the cost of energy efficient property installed during construction, with a maximum deduction of $1.50 per square foot of the building. For existing buildings, a partial deduction would be available for buildings that achieve certain savings with either new lighting, envelope components, or HVAC.

- **Energy management devices**. The provision establishes a three-year recovery period for "smart meters," which measure and record electricity usage data on a time-differentiated basis (at least four separate time segments per day) and provide such time-differentiated data on at least a monthly basis to both consumers and the supplier or provider. The provision would be effective beginning in 2004 through the end of 2007.

Part II–Fuels and Alternative Motor Vehicles

4.3 Cent Excise Tax. The provision repeals the 4.3-cent excise tax on diesel fuel used in trains and barges. The 0.1 percent per gallon for the Leaking Underground Storage Tank ("LUST") Trust Fund is unchanged.

Diesel/Water Emulsion. The agreement reduces the excise tax rate on diesel-water fuel emulsion from 24.3 cents to 19.7 cents per gallon.

Small Producer Ethanol Credit. The agreement increases the size of a small producer to one with not more than 60 million in production capacity, provides alternative minimum tax relief, and establishes a pass-through mechanism for cooperatives.

VEETC. The agreement establishes a new excise tax credit for ethanol, ethers derived from alcohol, and biodiesel. It does not repeal the current law partial exemption nor transfer the 2.5 cents currently retained in the trust fund. The package extends ethanol incentives through 2010.

Biodiesel. The conference agreement establishes an income tax credit and an excise tax credit for fuel produced from biomass, including soybean oil and other oils and recycled greases. The credits are effective 2004 and 2005.

Duty-free gas. The provision requires that any gasoline and diesel fuel sold at duty-free sales enterprises would be considered entered for consumption into the customs territory of the United States, and would be subject to fuel excise taxes.

Vehicles Credits. The conference agreement provides new tax credits for the purchase of four different types of advanced technology vehicles: hybrid motor vehicles, lean-burn diesel vehicles, alternative-fuel motor vehicles, and fuel cell motor vehicles, and it repeals the current-law phase-out for the credit for electric motor vehicles. Vehicles must meet minimum emissions standards to qualify.

Infrastructure. The agreement extends and modifies 179A with respect to refueling property. It increases the limitation of qualifying expenses to $150,000 per location. The provision extends the placed in service date through 2009 (2011 in the case of property related to hydrogen fuel).

SUBTITLE B–Reliability

- **Natural gas gathering lines treated as seven-year property.** The provision establishes a seven-year recovery period and a class life of 14 years for gathering lines. In addition, the provision provides that there is no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to such property.
- **Natural gas distribution lines treated as fifteen-year property.** The provision establishes a 15-year recovery period and a class life of 35 years for distribution lines.

- **Electric transmission property treated as fifteen-year property.** The provision establishes a 15-year recovery period and a class life of 20 years for electric transmission property (69 kV and above), the original use of which commences after the date of enactment. In addition, the provision provides that there is no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to such property.

- **Expensing of capital costs incurred and credit for production in complying with EPA sulfur regulations.** These provisions permit small business refiners to claim an immediate deduction (i.e., expensing) for up to 75 percent of the costs paid to comply with the EPA sulfur regulations.

- **Determination of small refiner exception to oil depletion deduction.**[1] The provision modifies the definition of small refiners for purposes of determining whether they are eligible for percentage depletion to be refiners with an *average* daily run not in excess of 67,500 barrels (under current law small refiners are limited to those with daily maximum runs of 50,000 barrels or less).

- **Sales or Dispositions to Implement Federal Energy Regulatory Commission or State Electric Restructuring Policy.** The provision permits a taxpayer to elect to recognize gain from a qualifying electric transmission transaction ratably over an eight-year period beginning in the year of sale if the amount realized from such sale is used to purchase exempt utility property

[1] Depletion, like depreciation, is a form of capital cost recovery. Two methods are allowable: (1) cost depletion and (2) percentage depletion. The tax code generally limits the percentage depletion method for oil and gas properties to independent producers and royalty owners. Generally, 15% of the taxpayer's gross income from oil- or gas-producing property is allowed as a deduction in each taxable year.

within the applicable period (i.e., four years after the close of the taxable year in which the qualifying transmission transaction occurs).

- **Modification of Special Rules for Nuclear Decommissioning Costs.** The provision modifies tax rules related to nuclear decommissioning costs, including the following changes. It repeals the requirement that contributions to a qualified fund must be collected as part of the cost of service to ratepayers. Thus, all taxpayers, including unregulated taxpayers, are allowed a deduction for amounts contributed to a qualified fund. The provision also repeals the limitation that a qualified fund only accumulate an amount sufficient to pay decommissioning costs incurred during the period the fund was in existence. The provision allows deductible contributions to a qualified fund subsequent to the end of a nuclear power plant's useful life provided the assets in the qualified fund do not exceed the taxpayer's allocable share of the power plant's decommissioning costs.

  The provision also clarifies that no gain or loss is recognized on the transfer of a qualified fund in connection with the transfer of the power plant with respect to which the fund was established.

- **Treatment of Certain Income from Electric Cooperatives.** Income accrued or received by a rural electric cooperative (other than income received or accrued directly or indirectly from a member of the cooperative) from the provision or sale of electric energy distribution services or ancillary services on a nondiscriminatory open-access basis is excluded for purposes of the 85/15 test for tax exemption. Income from nuclear decommissioning transactions and voluntary exchanges or involuntary conversions of certain property subject to gain deferral is also excluded for purposes of the 85/15 test.

- **Exempt Certain Prepayments for Natural Gas From Tax-Exempt Bond Arbitrage Rules.** The provision creates a safe harbor exception to the general rule that tax-exempt, bond-financed prepayments violate the arbitrage restrictions.

SUBTITLE C–Production

Part I–Oil and Gas Provisions

- **Oil and Gas Production from Marginal Wells.** This is a $3, per-barrel credit for the production of oil and $0.50, per-1,000 cubic feet credit for natural gas. The credit is only available if the price of oil is below $18 ($2 for natural gas). The maximum amount of production on which the credit may be claimed is 1,095 barrels or barrel equivalents. The credit can be carried back for five years.

- **Temporary Suspension of Limitation Based on 65 Percent of Taxable Income and Extension of Suspension of Taxable Income Limit.** The provision extends through 2004 a suspension of the 100% of net income limit on percentage depletion deduction with respect to marginal production. The provision also suspends, through 2004, the provision limiting the percentage depletion deduction to 65% of a taxpayer's overall taxable income.

- **Delay Rental Payments.** This provision allows taxpayers to amortize over two years "delay rental payments" (payments made by oil and gas producers under production contracts with mineral owners when the producer delays mineral production, thus delaying payments of royalties under the contract).

- **Geological and Geophysical Costs (G&G costs).** G&G costs are incurred for the purpose of obtaining data when exploring for minerals. The provision allows taxpayers to amortize over two years G&G costs incurred in connection with oil and gas exploration in the U.S.

- **Modification of Credit for Producing Fuel From a Non-Conventional Source (Section 45K, formerly Section 29).** The Committee bill provides a three-year placed-in-service window for new wells (through 2006), at a credit of $3 per barrel (or Btu equivalent) for production from all section 29 sources except synthetic fuels from coal. The credit is adjusted for inflation. All production is subject to a 200,000 cubic feet per day average cap. The credit can be claimed for four years of production, but not for production after 2009. The provision also extends the new reduced credit for certain existing facilities through 2006 (certain existing wells, coal gasification from lignite, certain coke facilities). The credit is expanded to include existing and new coke facilities that have not previously received the section 29 benefit.

  The provision also adds refined coal, coalmine gas, and agricultural waste as new nonconventional sources. For coalmine methane, the gas may be captured from an existing mine, but the methane capture has to be new. The provision also allows taxpayers to claim a tax credit on qualifying liquid, gaseous, or solid synthetic fuels produced from coal (including lignite or high carbon fly ash) for facilities placed in service after the date of enactment and before January 1, 2008. A qualifying fuel must emit 20% less NOX, and either SO2 or mercury, than the feedstock, and it must sell at a price that is 50% higher than the feedstock. The credit is available for four years of production (five years in the case of refined coal). The credit is added to the list of general business credits, providing limited carryforward and carryback.

  All production is subject to a 200,000 cubic feet per day average cap. In addition, the credit is subject to a December 31, 2009 cutoff date, with the exception of credits for refined coal.

Part II–Alternative Minimum Tax Provisions

- **New Nonrefundable Personal Credits Allowed Against Regular and Minimum Taxes.** The provision allows the personal energy credits added by the bill to offset both the regular tax and the alternative minimum tax.

- **Business related energy credits allowed against regular and minimum tax.** The provision treats the tentative minimum tax as being zero with respect to: (1) the business energy credits added by the bill for construction of new energy efficient homes, energy efficient appliances, production of low sulfur diesel fuel, and oil and gas production from marginal wells; (2) for taxable years beginning after December 31, 2003, the section 40 alcohol fuels credit; (3) for taxable years beginning in 2004 and 2005, the section 43 enhanced oil recovery credit; and (4) the section 45 credit for electricity produced from a facility (placed in service after the date of enactment) during the first four years of production beginning on the date the facility is placed in service.

- **Temporary Repeal of Alternative Minimum Tax Preference For Intangible Drilling Costs.** The bill repeals the AMT preference for intangible drilling costs for oil and gas wells for taxpayers other than integrated oil companies. The provision applies to taxable years beginning after December 31, 2003, and beginning before January 1, 2006.

Part III–Clean Coal Incentives

The clean coal tax incentives include investment tax credits available to taxpayers receiving a certificate from the Secretary of the Treasury. The credits apply to electricity generating facilities totaling no more than 10,000 MW of generating capacity nationwide.

- **Clean coal investment tax credit.** The agreement creates an investment tax credit of 15% for facilities retrofitted, repowered or replaced with clean coal technology (currently available technology) within 10 years of the date of enactment. Total capacity of qualifying units is limited to 4,000 MW. Qualifying facilities must improve efficiency by 5% and achieve specific emission requirements.

- **Advanced clean coal investment tax credit.** The agreement establishes a 17.5% investment tax credit for advanced clean coal technology. Qualifying facilities must meet certain capacity standards, thermal efficiency standards, and emissions standards.

- **Amortization of pollution control facilities.** The agreement allows pollution control facilities to be amortized over 60 months. For facilities in operation prior to 1976, new pollution control equipment may be amortized over 36 months.

Part IV–High-Volume Natural Gas Provisions

- **High-Volume Natural Gas Pipe Treated as Seven-Year Property.** The provision establishes a statutory seven-year recovery period and a class life of 22 years for any high-volume natural gas pipe the original use of which commences after the date of enactment.

- **Extension of Enhanced Oil Recovery Credit to High Volume Natural Gas Facilities.** The provision provides that expenses in connection with the construction of any qualifying natural gas processing plant capable of processing one trillion Btus of natural gas into a natural gas pipeline system on a daily basis are qualified for the enhanced oil recovery credit. A qualifying natural gas processing plant also must produce carbon dioxide for re-injection into a producing oil or gas field.

Subtitle D–Additional Provisions

- **Extension of accelerated depreciation benefit for energy-related businesses on Indian reservations.** The provision extends the accelerated depreciation incentive for property placed in service before January 1, 2006, as part of a facility for: (1) the generation or transmission of electricity, (2) an oil or gas well, (3) the transmission or refining of oil or gas, or (4) the production of any qualified fuel.

- **Payment of Dividends on Stock of Cooperatives Without Reducing Patronage Dividends**. The provision provides a special rule for dividends on capital stock of a cooperative.

- **Distributions from publicly traded partnerships treated as qualifying income of regulated investment companies (RIC).** The provision modifies the 90 percent test with respect to income of a RIC to include income derived from an interest in certain publicly traded partnerships.

- **Suspension of Duties on Ceiling Fans**. The provision suspends the present customs duty applicable to ceiling fans through December 31, 2005.

- **Suspension of Duties on Steam Generators, and Certain Reactor Vessel Head, Used in Nuclear Facilities**. The provision extends the present-law suspension of customs duty applicable to nuclear steam generators through December 31, 2008. The provision also temporarily suspends the present customs duty applicable to nuclear reactor vessel heads for Column 1 countries through December 31, 2007.

- **Brownfields demonstration program for qualified green building and sustainable design projects.** The provision creates a new category of tax-exempt bonds issued as part of an issue that finances a project that meets certain criteria and authorizes $2 billion of bond authority.

Title XIV - Miscellaneous

Subtitle A – Rural and Remote Electricity Construction: The Conference Report authorizes $5 million for each fiscal year from 2005 through 2011 for the Denali Commission – created to assist in economic development in Alaska – to permit energy generation and development, energy transmission, fuel tank replacement and clean up, fuel transportation networks and other energy programs. It allows the Rural Utilities Service to make grants to improve electric generation, transmission and distribution systems in rural and remote communities with exceptionally high electricity costs.

Subtitle B – Coastal Programs: The Conference Report provides royalty relief for holders of oil or gas leases on the outer Continental Shelf, requiring a royalty payment of 44 cents on the dollar. It creates within the United States Treasury the Secure Energy Reinvestment Fund, which will be funded from excess royalties from outer Continental Shelf oil and gas leases, and from authorized appropriations of $500 million for each fiscal year from 2004 through 2013. The fund will be distributed to coastal energy states that have a Secure Energy Reinvestment Plan approved by the Secretary of the Interior.

Subtitle C – Reforms to the Board of Directors of the Tennessee Valley Authority

Subtitle D – Other Provisions: The Conference Report amends the Clean Air Act to allow the Administrator for the Environmental Protection Agency to extend the attainment date for certain downwind areas with respect to a particular national ambient air quality standard for ozone. The report allows states to provide tax incentives for the production of electricity from coal mined within the state, from renewable resources such as wind, solar or biomass, or ethanol.

Title XV – Ethanol and Motor Fuels

Subtitle A – General Provisions: The Conference Report mandates that the amount of ethanol sold or introduced into commerce must equal 3.1 billion gallons in 2005 and increase each year until the amount equals five billion gallons in 2012. Noncontiguous states may be exempted from the mandate. It also provides liability protection to producers and users of MTBE, a fuel additive whose use was approved and encouraged by the Federal government. The Secretary of Energy may provide grants to producers to producers of cellulosic biomass ethanol and waste-derived ethanol in the United States and authorizes $750 million for fiscal years 2004 through 2006.

Subtitle B – Underground Storage Tank Compliance: The Conference Report requires at least 80 percent of all dollars appropriated from the Leaking Underground Storage Tank (LUST) Trust Fund to be sent to the states for operating leaking underground tank programs. It provides increases in State funding from the LUST Trust Fund for states containing a larger number of tanks or whose leaking tanks present a greater threat to groundwater. It requires onsite inspections of underground storage tanks every three years after a brief period for the state to update its backlog. It establishes operator-training programs, where they do not already exist. It institutes a specific new funding category to clean up tank-related releases of oxygenated fuel additives in gasoline, like MTBE. It prohibits federal facilities from exempting themselves from complying with all federal, state, and local underground tank laws. And it asks states to submit an annual inventory to the U.S. EPA detailing the number of regulated tanks in its state and which of those tanks are leaking. The report authorizes $380 million per year, through fiscal year 2008, for general administration; operator training and enforcement activities; cleanups of gasoline or chemical contaminated sites; cleanups of ether fuel additives in gasoline like MTBE; inspection programs and requirements; and for release prevention, compliance, and enforcement activities.